



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on July 6, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5470

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **DHL International E.C.**

Date Filed: March 31, 1999

Relief requested: Exemption from 49 U.S.C. 41301 and statement of authorization pursuant to 14 CFR 212 of the Department's regulations to display the airline designator code of DHL Airways, Inc., on all-cargo flights operated by DHL International E.C. between Bahrain and Brussels. (DHL International E.C. conducts its Bahrain-Brussels operations using aircraft wet leased from Nordstress Australia Pty, Ltd.)

Applicant representative: R. Tenney Johnson 202-261-3510

Responsive pleadings: None

DISPOSITION

Action: Approved

Action date: July 6, 1999

Effective dates of exemption authority granted: July 6, 1999 - July 6, 2000

Effective dates of statement of authorization granted: Indefinite, subject to attached code-share conditions

Basis for approval (bilateral agreement/reciprocity): We found that comity and reciprocity with Bahrain supported grant of this authority. We also found the applicant operationally and financially qualified to conduct the proposed services, and properly licensed.¹ The applicant requested a waiver of our standard requirement that substantial ownership and effective control of a foreign carrier rest in the hands of citizens of its homeland.² Taking into account all the specific facts of this case, we found that, despite the presence of non-homeland interests, there was nothing in the ownership and control of the carrier that would be inimical to U.S. aviation policy or interests, and granted the applicant's request for waiver on that basis.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Standard exemption conditions (attached) ☒ Attached code-share conditions

☒ **Special conditions:** In the conduct of the services authorized, DHL International E.C. may use only aircraft wet leased from a duly authorized and properly supervised U.S. or foreign air carrier that receives requisite authority under the provisions of 14 CFR 212 of the Department's regulations.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp

¹ The applicant filed a motion seeking confidential treatment under Rule 39 of its financial data summaries.. We granted its request. Under Rule 39, this confidentiality determination becomes effective 5 days after the date of service of this notice unless a petition for reconsideration, or a statement of intent to seek judicial review, is filed before the effective date.

² It stated that it is 99.99% owned by DHL Worldwide Express B.V., a Netherlands company which, in turn, is wholly owned by DHL International Limited, a holding company incorporated in Bermuda. Five percent or more of the stock of DHL International Limited is held by each of the following companies: Japan Airlines Company and Nissho Iwai (Japan); Lufthansa Cargo A.G. and Deutsche Post A.G. (Germany); and Greenpark International Ltd. (British Virgin Islands).

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

(a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

The code-share operations authorized here are subject to the following conditions:

- (a) The statement of authorization will remain in effect only as long as (i) DHL International E.C. and DHL Airways Inc. continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share and/or alliance agreement providing for the code-share operations remains in effect;
- (b) DHL International E.C. and DHL Airways Inc. must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. We expect this notification to be received within 10 days of such non-effectiveness or of such decision. Such notices should be filed in Docket OST-99-5470;
- (c) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. ¹Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the waybill) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the shipper; that the shipper liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition; and
- (d) The authority granted here is specifically conditioned so that neither DHL International E.C. nor DHL Airways Inc. shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

We may amend, modify, or revoke this authority at any time without hearing. ²

¹ On March 8, 1999, the Department adopted a new regulation, Part 257, governing code-sharing operations. That regulation becomes effective July 13, 1999.

² We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently decide to amend their code-share agreement to include any provision relating to an exclusive arrangement between the parties, that amended language must first be submitted for consideration by the Department.